

**Introduced by Senator Machado**

January 10, 2005

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An act to amend Sections 51203, 51283, 51283.4, and 51283.5 of the Government Code, relating to land conservation, and declaring the urgency thereof, to take effect immediately.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 49, as introduced, Machado. Land conservation contracts.

Existing law makes the current fair market valuations required to determine the cancellation fee for removing land from a Williamson Act conservation contract subject to appeal to the county board of equalization. Existing law requires the county assessor to send a notice to the assessee that indicates the current fair market value of the land as though it were free of the contractual restriction and to notify the landowner and the Department of Conservation of the opportunity to request formal review from the assessor. Existing law permits the Department of Conservation or the landowner, if either believes that the current fair market valuations are inaccurate, to request formal review from the county assessor in the county considering the cancellation petition. Existing law permits the assessor to formally review the valuation pursuant to specified procedures and to recompute the cancellation fee, as specified.

This bill would require the county assessor to formally review the valuation upon receiving a request for formal review and would make other related changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 51203 of the Government Code is amended to read:

51203. (a) The assessor shall determine the current fair market value of the land as if it were free of the contractual restriction pursuant to Section 51283. The Department of Conservation or the landowner, also referred to in this section as “parties,” may provide information to assist the assessor to determine the value. Any information provided to the assessor shall be served on the other party, unless the information was provided at the request of the assessor, and would be confidential under law if required of an assessee.

(b) Within 45 days of receiving the assessor’s notice pursuant to subdivision (a) of Section 51283 or 51283.4, if the Department of Conservation or the landowner believes that the current fair market valuation certified pursuant to subdivision (b) of Section 51283 or Section 51283.4 is not accurate, the department or the landowner may request formal review from the county assessor in the county considering the petition to cancel the contract. The department or the landowner shall submit to the assessor and the other party the reasons for believing the valuation is not accurate. The assessor may recover his or her reasonable costs of the formal review from the party requesting the review, and may provide an estimate of those costs to the requesting party. The recovery of these costs from the department may be deducted by the city or county from the cancellation fees received pursuant to this chapter prior to transmittal to the Controller for deposit in the Soil Conservation Fund.

(1) If no request is made within 45 days of receiving notice of the valuation, the assessor’s valuation shall be used to calculate the fee.

(2) Upon receiving a request for formal review, the assessor ~~may~~ *shall* formally review his or her valuation. The assessor shall notify the parties that the formal review is being undertaken and that information to aid the assessor’s review shall be submitted within 30 days of the date of the notice to the parties. Any information submitted to the assessor shall be served on the other party who shall have 30 days to respond to that information to the assessor. If the response to the assessor contains new

1 information, the party receiving that response shall have 20 days  
2 to respond to the assessor as to the new information. All  
3 submittals and responses to the assessor shall be served on the  
4 other party by personal service or an affidavit of mailing. The  
5 assessor shall avoid ex parte contacts during the formal review  
6 and shall report any such contacts to the department and the  
7 landowner at the same time the review is complete. The assessor  
8 shall complete the review no later than 120 days of receiving the  
9 request.

10 (3) At the conclusion of the formal review, the assessor shall  
11 either revise the cancellation valuation or determine that the  
12 original cancellation valuation is accurate. The assessor shall  
13 send the revised valuation or notice of the determination that the  
14 valuation is accurate to the department, the landowner, and the  
15 board or council considering the petition to cancel the contract.  
16 The assessor shall include a brief narrative of what consideration  
17 was given to the items of information and responses directly  
18 relating to the cancellation value submitted by the parties. The  
19 assessor shall give no consideration to a party's information or  
20 response that was not served on the other party.

21 (c) For purposes of this section, the valuation date of any  
22 revised valuation pursuant to formal review or following judicial  
23 challenge shall remain the date of the assessor's initial valuation,  
24 or his or her initial recomputation pursuant to Section 51283.4.  
25 For purposes of cancellation fee calculation in a tentative  
26 cancellation as provided in Section 51283, or in a recomputation  
27 for final cancellation as provided in Section 51283.4, a  
28 cancellation value shall be considered current for one year after  
29 its determination and certification by the assessor.

30 (d) Notwithstanding any other provision of this section, the  
31 department and the landowner may agree on a cancellation  
32 valuation of the land. The agreed valuation shall serve as the  
33 cancellation valuation pursuant to Section 51283 *or Section*  
34 *51283.4*. The agreement shall be transmitted to the board or  
35 council considering the petition to cancel the contract.

36 (e) This section represents the exclusive administrative  
37 procedure for appealing a cancellation valuation calculated  
38 pursuant to this section. The Department of Conservation shall  
39 represent the interests of the state in the administrative and

1 judicial remedies for challenging the determination of a  
2 cancellation valuation or cancellation fee.

3 SEC. 2. Section 51283 of the Government Code is amended  
4 to read:

5 51283. (a) Prior to any action by the board or council giving  
6 tentative approval to the cancellation of any contract, the county  
7 assessor of the county in which the land is located shall  
8 determine the current fair market value of the land as though it  
9 were free of the contractual restriction. The assessor shall certify  
10 to the board or council the cancellation valuation of the land for  
11 the purpose of determining the cancellation fee. At the same  
12 time, the assessor shall send a notice to the landowner and the  
13 Department of Conservation indicating the current fair market  
14 value of the land as though it were free of the contractual  
15 restriction. The notice shall advise the landowner and the  
16 department of the opportunity to request formal review from the  
17 assessor.

18 (b) Prior to giving tentative approval to the cancellation of any  
19 contract, the board or council shall determine and certify to the  
20 county auditor the amount of the cancellation fee that the  
21 landowner shall pay the county treasurer upon cancellation. That  
22 fee shall be an amount equal to 12 ½ percent of the cancellation  
23 valuation of the property.

24 (c) If it finds that it is in the public interest to do so, the board  
25 or council may waive any payment or any portion of a payment  
26 by the landowner, or may extend the time for making the  
27 payment or a portion of the payment contingent upon the future  
28 use made of the land and its economic return to the landowner  
29 for a period of time not to exceed the unexpired period of the  
30 contract, had it not been canceled, if all of the following occur:

31 (1) The cancellation is caused by an involuntary transfer or  
32 change in the use which may be made of the land and the land is  
33 not immediately suitable, nor will be immediately used, for a  
34 purpose which produces a greater economic return to the owner.

35 (2) The board or council has determined that it is in the best  
36 interests of the program to conserve agricultural land use that the  
37 payment be either deferred or is not required.

38 (3) The waiver or extension of time is approved by the  
39 Secretary of the Resources Agency. The secretary shall approve  
40 a waiver or extension of time if the secretary finds that the

1 granting of the waiver or extension of time by the board or  
2 council is consistent with the policies of this chapter and that the  
3 board or council complied with this article. In evaluating a  
4 request for a waiver or extension of time, the secretary shall  
5 review the findings of the board or council, the evidence in the  
6 record of the board or council, and any other evidence the  
7 secretary may receive concerning the cancellation, waiver, or  
8 extension of time.

9 (d) The first two million thirty-six thousand dollars  
10 (\$2,036,000) of revenue paid to the Controller pursuant to  
11 subdivision (e) in the 2004–05 fiscal year, and any other amount  
12 as approved in the final Budget Act for each fiscal year  
13 thereafter, shall be deposited in the Soil Conservation Fund,  
14 which is continued in existence. The money in the fund is  
15 available, when appropriated by the Legislature, for the support  
16 of all of the following:

17 (1) The cost of the farmlands mapping and monitoring  
18 program of the Department of Conservation pursuant to Section  
19 65570.

20 (2) The soil conservation program identified in Section 614 of  
21 the Public Resources Code.

22 (3) Program support costs of this chapter as administered by  
23 the Department of Conservation.

24 (4) Program support costs incurred by the Department of  
25 Conservation in administering the open-space subvention  
26 program (Chapter 3 (commencing with Section 16140) of Part 1  
27 of Division 4 of Title 2).

28 (e) When cancellation fees required by this section are  
29 collected, they shall be transmitted by the county treasurer to the  
30 Controller and deposited in the General Fund, except as provided  
31 in subdivision (d) *of this section and subdivision (b) of Section*  
32 *51203*. The funds collected by the county treasurer with respect  
33 to each cancellation of a contract shall be transmitted to the  
34 Controller within 30 days of the execution of a certificate of  
35 cancellation of contract by the board or council, as specified in  
36 subdivision (b) of Section 51283.4.

37 (f) It is the intent of the Legislature that fees paid to cancel a  
38 contract do not constitute taxes but are payments that, when  
39 made, provide a private benefit that tends to increase the value of  
40 the property.

1 SEC. 3. Section 51283.4 of the Government Code is  
2 amended to read

3 51283.4. (a) Upon tentative approval of a petition  
4 accompanied by a proposal for a specified alternative use of the  
5 land, the clerk of the board or council shall record in the office of  
6 the county recorder of the county in which is located the land as  
7 to which the contract is applicable a certificate of tentative  
8 cancellation, which shall set forth the name of the landowner  
9 requesting the cancellation, the fact that a certificate of  
10 cancellation of contract will be issued and recorded at the time  
11 that specified conditions and contingencies are satisfied, a  
12 description of the conditions and contingencies which must be  
13 satisfied, and a legal description of the property. Conditions to be  
14 satisfied shall include payment in full of the amount of the fee  
15 computed under the provisions of Section 51283, together with a  
16 statement that unless the fee is paid, or a certificate of  
17 cancellation of contract is issued within one year from the date of  
18 the recording of the certificate of tentative cancellation, the fee  
19 shall be recomputed as of the date *of notice described in*  
20 *subdivision (b) or the date* the landowner requests a  
21 recomputation. A landowner may request a recomputation when  
22 he or she believes that he or she will be able to satisfy the  
23 conditions and contingencies of the certificate of cancellation  
24 within 180 days. The board or council shall request the assessor  
25 to recompute the cancellation valuation. The assessor shall  
26 recompute the valuation, certify it to the board or council, and  
27 provide notice to the Department of Conservation and landowner  
28 as provided in subdivision (a) of Section 51283, and the board or  
29 council shall certify the fee to the county auditor. Any provisions  
30 related to the waiver of the fee or portion thereof shall be treated  
31 in the manner provided for in the certificate of tentative  
32 cancellation. Contingencies to be satisfied shall include a  
33 requirement that the landowner obtain all permits necessary to  
34 commence the project. The board or council may, at the request  
35 of the landowner, amend a tentatively approved specified  
36 alternative use if it finds that the amendment is consistent with  
37 the findings made pursuant to subdivision (a) of Section 51282.

38 (b) The landowner shall notify the board or council when he or  
39 she has satisfied the conditions and contingencies enumerated in  
40 the certificate of tentative cancellation. Within 30 days of receipt

1 of the notice, and upon a determination that the conditions and  
2 contingencies have been satisfied, the board or council shall  
3 execute a certificate of cancellation of contract, cause ~~the~~ the  
4 certificate to be recorded, and send a copy to the Director of  
5 Conservation.

6 (c) If the landowner has been unable to satisfy the conditions  
7 and contingencies enumerated in the certificate of tentative  
8 cancellation, the landowner shall notify the board or council of  
9 the particular conditions or contingencies he or she is unable to  
10 satisfy. Within 30 days of receipt of the notice, and upon a  
11 determination that the landowner is unable to satisfy the  
12 conditions and contingencies listed, the board or council shall  
13 execute a certificate of withdrawal of tentative approval of a  
14 cancellation of contract and cause the same to be recorded.  
15 However, the landowner shall not be entitled to the refund of any  
16 cancellation fee paid.

17 SEC. 4. Section 51283.5 of the Government Code is  
18 amended to read:

19 51283.5. (a) The Legislature finds and declares that  
20 cancellation fees should be calculated in a timely manner and  
21 disputes over cancellation fees should be resolved before a city  
22 or county approves a tentative cancellation. However, the city or  
23 county may approve a tentative cancellation notwithstanding an  
24 assessor's formal review or judicial challenge to the cancellation  
25 value or fee.

26 (b) If the valuation changes after the approval ~~or~~ of a tentative  
27 cancellation, the certificate of tentative cancellation shall be  
28 amended to reflect the correct valuation and cancellation fee.

29 (c) If the landowner wishes to pay a cancellation fee when a  
30 formal review ~~or an independent appraisal~~ has been requested, he  
31 or she may pay the fee required in the current certificate of  
32 cancellation and provide security determined to be adequate by  
33 the Department of Conservation for 20 percent of the  
34 cancellation fee based on the assessor's valuation. The board or  
35 council shall hold the security and release it immediately upon  
36 full payment of the cancellation fee determined pursuant to  
37 Section 51203.

38 (d) The city or county may approve a final cancellation  
39 notwithstanding a pending formal review or judicial challenge to

1 the cancellation valuation or fee. The certificate of final  
2 cancellation shall include the following statements:

3 (1) That formal review or judicial challenge of the cancellation  
4 valuation or fee is pending.

5 (2) That the fee may be adjusted, based upon the outcome of  
6 the review or challenge.

7 (3) The identity of the party who will be responsible for  
8 paying any additional fee or will receive any refund.

9 (4) The form and amount of security provided by the  
10 landowner or other responsible party and approved by the  
11 Department of Conservation.

12 (e) Upon resolution, the landowner or the party identified in  
13 the certificate shall either pay the balance owed to the county  
14 treasurer, or receive from the county treasurer or the controller  
15 any amount of overpayment, and shall also be entitled to the  
16 immediate release of any security.

17 (f) (1) If a party does not receive the notice required pursuant  
18 to Section 51203, 51283, 51283.4, or 51284, a judicial challenge  
19 to the cancellation valuation may be filed within three years of  
20 the latest of the applicable following events:

21 (A) The board or council certification of the fee pursuant to  
22 subdivision (b) of Section 51283, or for fees recomputed  
23 pursuant to Section 51283.4, the execution of a certificate of  
24 cancellation under that section.

25 (B) The date of the assessor's determination pursuant to  
26 paragraph (3) of subdivision (b) of Section 51203.

27 (C) The service of notice to the Director of Conservation of  
28 the board or council's recorded certificate of final cancellation.

29 (2) If a party did receive the required notice pursuant to  
30 Section 51203, 51283, 51283.4, or 51284, a judicial challenge to  
31 the cancellation valuation may be filed only after the party has  
32 exhausted his or her administrative remedies through the formal  
33 review process specified in Section 51203, and only within 180  
34 days of the latest of the applicable following events:

35 (A) The board or council certification of the fee pursuant to  
36 subdivision (b) of Section 51283 or for fees recomputed pursuant  
37 to Section 51283.4, the execution of a certificate of cancellation  
38 under that section.

39 (B) The date of the assessor's determination pursuant to  
40 paragraph (3) of subdivision (b) of Section 51203.



1 (C) The service of notice to the Director of Conservation or  
2 the board or council's recorded certificate of final cancellation.

3 SEC. 5. The Legislature finds and declares that the  
4 amendments made by Chapter 794 of the Statutes of 2004 or by  
5 this act shall not apply to petitions that have been accepted as  
6 complete pursuant to Section 51284.1 of the Government Code  
7 prior to January 1, 2005.

8 SEC. 6. This act is an urgency statute necessary for the  
9 immediate preservation of the public peace, health, or safety  
10 within the meaning of Article IV of the Constitution and shall go  
11 into immediate effect. The facts constituting the necessity are:

12 This act contains amendments that were inadvertently omitted  
13 from the measure enacting Chapter 794 of the Statutes of 2004.  
14 In order for the formal review process of land conservation  
15 contract cancellation to work properly and to ensure certainty in  
16 the results for local agencies, landowners, and the Department of  
17 Conservation, it is necessary that this act take effect immediately.